HOUSE BILL 3214
By Cobb C

SENATE BILL 3429

By Burchett

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 1; Title 63 and Title 68, relative to contracts with health care providers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 1, is amended by adding Sections 2 through 19 of this act as a new part.

SECTION 2.

(a) As used in this act, unless the context otherwise requires:

(1) "Category of coverage" means one of the following types of coverage offered by a person or entity:

(A) Health maintenance organization plans;

(B) Any other commercial plan or contract that is not a health maintenance organization plan;

(C) Medical assistance;

(D) Medicaid; or

(E) Workers' compensation.

(2) "Edit" means a practice or procedure pursuant to which one (1) or more adjustments are made regarding procedure codes, including the American Medical Association's current procedural terminology code, also known as a "cpt code", and the centers for medicare and medicaid services health care common procedure coding system, also known as "hcpcs", that results in:

(A) Payment for some, but not all, of the codes;

(B) Payment for a different code;

(C) A reduced payment as a result of services provided to a patient that are claimed under more than one (1) code on the same service date;

(D) A reduced payment related to a modifier used with a procedure code; or

(E) A reduced payment based on multiple units of the same code billed for a single date of service.

(3) "Health care contract" or "contract" means a contract entered into or renewed between a person or entity and a health care provider for the delivery of health care services to others;

(4) "Health care provider" means a person licensed or certified in this state pursuant to title 63 to practice dentistry, chiropractic, medicine, nursing, occupational therapy, osteopathy, optometry, physical therapy, podiatry, psychology, or other healing arts.

"Health care provider" also means an ambulatory surgical center licensed pursuant to title 68 and a professional corporation or other corporate entity consisting of licensed health care providers as permitted by the laws of this state.

(5)

(A) "Material change" means a change to a contract that decreases the health care provider's payment or compensation, changes the administrative procedures in a way that may reasonably be expected to significantly increase the provider's administrative expense, or adds a new category of coverage. A material change does not include:

(i) A decrease in payment or compensation resulting solely from a change in a published fee schedule upon which the payment or

compensation is based and the date of applicability is clearly identified in the contract;

(ii) A decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract;

(iii) An administrative change that may significantly increase the provider's administrative expense, the specific applicability of which is clearly identified in the contract;

(iv) Changes to an existing prior authorization, precertification, notification, or referral program that do not substantially increase the provider's administrative expense; or

(v) Changes to an edit program or to specific edits; however, the health care provider shall be provided notice of the changes and the notice shall include information sufficient for the health care provider to determine the effect of the change.

(B) If a change to the contract is administrative only and is not a material change, the change shall be effective upon at least fifteen (15) days' notice to the health care provider. All other notices shall be provided pursuant to the contract; and

(6) "Person or entity" means a person or entity that has a primary business purpose of contracting with health care providers for the delivery of health care services.

SECTION 2. Effective January 1, 2009, a person or entity that contracts with a health care provider shall comply with this act and shall include the provisions required by this act in the contract. A contract in existence prior to January 1, 2009, that is renewed or renews by its terms shall comply with this act no later than December 31, 2009.

SECTION 3.

(a) Each contract with a health care provider shall include a summary disclosure form disclosing, in plain language, the following:

(1) The terms governing compensation and payment;

(2) Any category of coverage for which the health care provider is to provide service;

(3) The duration of the contract and how the contract may be terminated;

(4) The identity of the person or entity responsible for the processing of the health care provider's claims for compensation or payment;

(5) Any internal mechanism required by the person or entity to resolve disputes that arise under the terms or conditions of the contract; and

(6) The subject and order of addenda, if any, to the contract.

(b) The summary disclosure form required by subsection (a) shall be for informational purposes only and shall not be a term or condition of the contract; however, such disclosure shall reasonably summarize the applicable contract provisions.

(c) If the contract provides for termination for cause by either party, the contract shall state the reasons that may be used for termination for cause, which terms shall not be unreasonable, and the contract shall state the time by which notice of termination for cause shall be provided and to whom the notice shall be given.

(d) The person or entity shall identify any utilization review or management, quality improvement, or similar program the person or entity uses to review, monitor, evaluate, or assess the services provided pursuant to a contract. The policies, procedures, or guidelines of such program applicable to a provider shall be disclosed upon request of the health care provider within fourteen (14) days after the date of the request.

SECTION 4.

(a) The disclosure of payment and compensation terms pursuant to Section 3 shall include information sufficient for the health care provider to determine the compensation or payment for the health care services and shall include the following:

(1) The manner of payment, such as fee-for-service, capitation, or risk sharing;

(2)

(A) The methodology used to calculate any fee schedule, such as relative value unit system and conversion factor, percentage of medicare payment system, or percentage of billed charges. As applicable, the methodology disclosure shall include the name of any relative value system; its version, edition, or publication date; any applicable conversion or geographic factor; and any date by which compensation or fee schedules may be changed by such methodology if allowed for in the contract;

(B) The fee schedule for codes reasonably expected to be billed by the health care provider for services provided pursuant to the contract, and, upon request, the fee schedule for other codes used by or which may be used by the health care provider. Such fee schedule shall include, as may be applicable, service or procedure codes such as current procedural terminology (cpt) codes or health care common procedure coding system codes and the associated payment or compensation for each service code.

(C) The required fee schedule may be provided electronically.

(D) A fee schedule for the codes described by subdivision (2)(B) shall be provided when a material change related to payment or compensation occurs. Additionally, a health care provider may request that a written fee schedule be provided up to twice per year, and the person or entity must provide such fee schedule promptly; and

(3) The person or entity shall state the effect of edits, if any, on payment or compensation. A person or entity may satisfy this requirement by providing a clearly understandable, readily available mechanism, such as through a web site, that allows a health care provider to determine the effect of edits on payment or compensation before service is provided or a claim is submitted.

(b) Notwithstanding any provision of this section to the contrary, disclosure of a fee schedule or the methodology used to calculate a fee schedule is not required from a person or entity if the fee schedule is for a plan for dental services, its providers include licensed dentists, the fee schedule is based upon fees filed with the person or entity by dental providers, and the fee schedule is revised from time to time based upon such filings. Specific numerical parameters are not required to be disclosed.

SECTION 5. Upon completion of processing of a claim, the person or entity shall provide information to the health care provider stating how the claim was adjudicated and the responsibility for any outstanding balance of any party other than the person or entity.

SECTION 6. When a proposed contract is presented by a person or entity for consideration by a health care provider, the person or entity shall provide in writing or make reasonably available the information required in Section 4. If the information is not disclosed in writing, it shall be disclosed in a manner that allows the health care provider to timely evaluate the payment or compensation for services under the proposed contract. The disclosure

obligations in this act shall not prevent a person or entity from requiring a reasonable confidentiality agreement regarding the terms of a proposed contract.

SECTION 7.

(a) A material change to a contract shall occur only if the person or entity provides in writing to the health care provider the proposed change and gives ninety (90) days' notice before the effective date of the change. The writing shall be conspicuously entitled "notice of material change to contract".

(b) If the health care provider objects in writing to the material change within fifteen (15) days and there is no resolution of the objection, either party may terminate the contract upon written notice of termination provided to the other party not later than sixty (60) days before the effective date of the material change.

(c) If the health care provider does not object to the material change pursuant to subsection (b), the change shall be effective as specified in the notice of material change to the contract.

(d) If a material change is the addition of a new category of coverage and the health care provider objects, the addition shall not be effective as to the health care provider, and the objection shall not be a basis upon which the person or entity may terminate the contract.

SECTION 8. Notwithstanding Section 6 to the contrary, a contract may be modified by operation of law as required by any applicable state or federal law or regulation, and the person or entity may disclose this change by any reasonable means.

SECTION 9. Nothing in this act shall be construed to require the renegotiation of a contract in existence before the applicable compliance date in this act, and any disclosure required by this act for such contracts may be by notice to the health care provider.

SECTION 10. A person or entity shall not assign, allow access to, sell, rent, or give the person's or entity's rights to the health care provider's services pursuant to the person's or entity's contract unless the person or entity complies with this section.

(1) The third party accessing the health care provider's services under the contract is an employer or other entity providing coverage for health care services to its employees or members and such employer or entity has, with the person or entity contracting with the health care provider, a contract for the administration or processing of claims for payment or service provided pursuant to the contract with the health care provider;

(2) The third party accessing the health care provider's services under the contract is an affiliate of, subsidiary of, or is under common ownership or control with the person or entity; or, is providing or receiving administrative services from the person or entity or an affiliate of, or subsidiary of, or is under common ownership or control with the person or entity;

(3) The health care contract specifically provides that it applies to network rental arrangements and states that it is for the purpose of assigning, allowing access to, selling, renting, or giving the person's or entity's rights to the health care provider's services;

(4) The individuals receiving services under the health care provider's contract are provided with appropriate identification stating where claims should be sent and where inquiries should be directed; and

(5) The third party accessing the health care provider's services through the health care provider's contract is obligated to comply with all applicable terms and conditions of the contract; except that a self-funded plan receiving administrative

services from the person or entity or its affiliates shall be solely responsible for payment to the provider.

SECTION 11. Except as permitted by this act, a person or entity shall not require, as a condition of contracting, that a health care provider waive or forego any right or benefit to which the health care provider may be entitled under state or federal law or regulation that provides legal protections to a person solely based on the person's status as a health care provider providing services in this state.

SECTION 12. Upon sixty (60) days' notice, a health care provider may decline to provide service pursuant to a contract to new patients covered by the person or entity. The notice shall state the reason or reasons for this action. For the purposes of this section, "new patients" means those patients who have not received services from the health care provider in the immediately preceding three (3) years. A patient shall not become a "new patient" solely by changing coverage from one (1) person or entity to another person or entity.

SECTION 13. A term for compensation or payment shall not survive the termination of a contract, except for a continuation of coverage required by law or with the agreement of the health care provider.

SECTION 14. A contract shall not preclude its use or disclosure to a third party for the purpose of enforcing the provisions of this act or enforcing other state or federal law. The third party shall be bound by the confidentiality requirements set forth in the contract or otherwise.

SECTION 15. A contract with a duration of less than two (2) years shall provide to each party a right to terminate the contract without cause, which termination shall occur with at least ninety (90) days' written notice. For contracts with a duration of two (2) or more years, termination without cause may be as specified in the contract.

SECTION 16. This act shall not apply to:

(1) An exclusive contract with a single medical group in a specific geographic area to provide or arrange for health care services; however, this act shall apply to contracts for health care services between the medical group and other medical groups;

(2) A contract or agreement for the employment of a health care provider or a contract or agreement between health care providers;

(3) A contract or arrangement entered into by a hospital or health care facility that is licensed or certified pursuant to title 68 or any outpatient service provider that has entered in to a joint venture with the hospital or health care facility or is owned by the hospital or health care facility; or

(4) A contract between a health care provider and the state or federal government or their agencies for health care services provided through a program for workers' compensation, medical assistance, medicare, the Cover Kids Act of 2006 provided for in title 71, chapter 3, part 11, or the Cover Tennessee Act of 2006 provided for in title 56, chapter 7, part 30.

SECTION 17. A contract subject to this act may include an agreement for binding arbitration.

SECTION 18.

(a) With respect to the enforcement of this act, including arbitration, there shall be available:

(1) Private rights of action at law and in equity;

(2) Equitable relief, including injunctive relief;

(3) Reasonable attorney fees when the health care provider is the prevailing party in an action to enforce this act, except to the extent that the violation of this act consisted of a mere failure to make payment pursuant to a contract;

(4) The option to introduce as persuasive authority prior arbitration awards regarding a violation of this act.

(b) Arbitration awards related to the enforcement of this act may be disclosed to those who have a bona fide interest in the arbitration.

SECTION 19. No provision of this act shall be used to justify any act or omission by a health care provider that is prohibited by any applicable professional code of ethics or state or federal law prohibiting discrimination against any person.

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.